



**United States District Court**

**November 01, 2021**

**Eastern District of Wisconsin**

**Case No . 21 - CV - 1153**

**KALKHOFF v. PANERA BREAD , LLC, et.al.**

**Re : Statement of Claim**

Dear Magistrate Judge Duffin,

In your October 28, 2021 outline you pointed out some cogent quotes as to the validity of a pauper making frivolous , malicious , or repetitive lawsuits. I'm well aware of my legal claims against Panera Bread Co. To date there are ( all told ) nineteen charges under federal and state WFEA. It has never been my intention to 'prosser' for the courts time by a vindictive former employee FRCP 11(b)(1). A frivolous lawsuit, in the Plaintiff's opinion, is where a well-to-do degreed couple decide to file a lawsuit against the township, claiming that the island was blocking their view on their lakefront property, requesting the town officials have it removed or be sued.

In our country there is no such thing as an Administrative Law Judge. Only an elected official can render and uphold our United States Constitution. Either you're a Judge or your not. What Administrative Law Judge DeLaO is doing is illegal. The Complainant in this case is thus

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being provided a hearing before an agency where demeanor evidence can be reversed by the agency itself or one of its members. If I rubbed my eye during a hearing does that mean I'm lying? These "quasi judicial" organizations are not part of the full-legal spectrum. Having the case heard before an Administrative Law Judge is like putting a Hershey's in direct sunlight hoping it won't melt. They obfuscate the golden rule and thus create a real despotism. Don't take my word for it though.

In Thomas Jefferson's , *Notes on Virginia [ 1784 ]* , he implicitly warned us of legislature assume all powers of government. Moreover , James Madison is quoted in the *Federalist No. 47*, " the accumulation of all powers may justly be pronounced the very definition of tyranny". I wondered if I read that right? I actually read it out-loud very S-L-O-W-L-Y. Professor Scalia further adds in 1979 a dark tale entitled *The ALJ Fiasco – A Reprise*. Scalia is quoted , " It is justifiable as a political system for selecting individuals who wield a considerable degree of political power – authority to overrule the action of two elected branches. No such power inheres the presiding officers at administrative hearings , even if Congress calls them judges " . Moreover, prior to 2009 the ALJ held enough power to seek compensatory and punitive damages before Governor Walker's repeal. Why then do we even need a District Court in the first place?

Deserving of a second look is the distinction between a " hearing officer " as opposed to an Article III Judge ; *Marbury v. Madison [1803] 5 U.S. 137*.

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Another “ administrative section “ is the Occupational Safety and Health Administration (OSHA). In a classic example understanding in how an administration utilizes their sound decision making skills is in the July 14, 1999 fiasco, where Mr. Brook’s , an OSHA “compliance officer “ , was one of three OSHA employees at the then Miller Park. While Mr. Brooks and the two other CSHO’s were exiting a trailer saw “ big blue “ hoisting a roof section ( winds were reported at 26 – 27 ) . Mr. Brooks did what any administrative agency would do, he ran to get his video camera to make a “you tube “ out of it. At one time , I’m told from a reliable source , this resulted in over a million “ hits “. William DeGraves might still be alive if it wasn’t for the action , or to put it out there , inaction of larry , moe , and curly. I digress.

In the Plaintiffs statement of claim , the conundrum he faces is if he submits the doctrine of equitable estoppel to defeat a FRCP 12 (b) (6) claim and is unsuccessful , then the state pendent claim should be dismissed as well. However , in *United Mine Workers v. Gibbs* 383 U.S. 715 , 726 ( 1966 ) the Supreme Court backed away from this and did not subject the pendent state claim to be dismissed. Moreover , the rule that the employee manual in writing must be signed by the employer ( *see Molder v. Southwestern Bell tel co.* 665 S. W. 2d 175 ( tex. Ct. App. 1983). The writing contains a breach of contract claims in the Plaintiffs possession at the time of hire in Workday. ( *see Downey v. Firestone Tire & Rubber Co.* , 630 F sup. 676 ( D.C.C. 1986 ) (employee handbook was sufficient writing to support Plaintiffs claim that the employer promised to give consideration to his service credits in any reduction in force ) . After the ninety day probationary period is over , Panera Bread Co. lacks a “ just cause “ to fire without cause ,

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real or fancied . ( *Collins v. City of Newton* . 2018 Miss. Lexus 123 , at \*1 ( March 8 , 2018 ). In the Plaintiff's complaint to the EEOC on 4/14/17 and the termination of Plaintiff effective in Workday 5/24/2017 is also highly disregarded. A computer program found out I was terminated before I was told. Hardly believable. The death of the Plaintiff constitutes defeasance of contract performance , not full contract performance on the part of the employee. Under Rule 12(b)(6) can never be applied to a fixed – term employment contract because of an employers inherent right in any such contract is to terminate the agreement for cause , cause in this matter extends to employment misconduct beyond a breach of contract by the employee FRCP 8(c)(1) *contributory negligence* .

If I may , my recent Fair Housing complaint to an “ administrative “ agency ( ERD ) became another peculiar arrangement of a “ no probable cause “ by the division through an “investigator “ . This eviction I endured was during Governor Ever's statewide moratorium prohibiting evictions , moreover , former President Trump enacted through Congress the CARES Act ( 4024 ) unlawfully prohibiting the same . I received , in truth , a finding of “ no probable cause “ on a Governor's order and a President's enactment. IM SHOCKED !!! Clearly , the key issue is whether the agency that I “ surrendered “ my claim to were within its subject matter competence. As with Panera Bread Co. and their Administrative Law Judges unremarkable attempt to place the tail before the dog. I have heard from investigators , hearing officers , equal rights officers , mediation experts , Paralegals , but no Judges . I have also heard from Jackson



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Lewis , “ of counsel “ for Panera Bread Co. , who is a real life died-in-the-wool Roseanne Roseannadanna .

In closing , your lambasting in no small measure describing how indigent Plaintiffs lack an economic incentive to exercise a constitutional right or discern from a wrong . You go on to say that the court may dismiss a Plaintiffs claim as delusional , irrational , etc. I’ll save myself from repeating all of it . Your Honor , with all due respect that takes a lot of nerve in my “ rule book “ ( see above ) . Enough said. Moving on.

### **MOTION FOR EQUITABLE ESTOPPEL AGAINST PANERA BREAD CO.**

Respectfully Submitted ,



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